

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**BRIAD WENCO, LLC**

**and**

**Case No. 29-CA-165942**

**FAST FOOD WORKERS COMMITTEE**

**BRIAD WENCO, LLC'S EXCEPTIONS TO THE  
ADMINISTRATIVE LAW JUDGE'S DECISION AND ORDER**

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***Counsel for Respondent***

Respondent Briad Wenco, LLC (“Respondent” or “Briad”), pursuant to Section 102.46 of the National Labor Relations Board’s rules and Regulations, respectfully submits the following exceptions to the Decision and Order (the “Decision”) issued by the Administrative Law Judge (“ALJ”) Joel P. Biblowitz on July 6, 2016.

No.	Page(s)	Respondent Excepts to the Following:
1	11:7-8	The ALJ’s finding that the instant case is “another case in line” with the Board’s decisions in <i>D.R. Horton, Inc.</i> , <i>Murphy Oil USA, Inc.</i> and <i>Cellular Sales of Missouri, LLC</i> .
2	11:9-11	The ALJ’s finding that Paragraphs 1 and 2 of the Arbitration Agreements require employees to utilize arbitration to determine any dispute with the Respondent and that paragraph 12 prohibits class, collective or consolidated actions.
3	11:14-48	The ALJ’s reliance in its Decision on the Board’s decisions in <i>D.R. Horton, Inc.</i> and <i>Murphy Oil USA, Inc.</i> , and the Seventh Circuit’s decision in <i>Jacob Lewis</i> , and the ALJ’s failure to rely on other U.S. Circuit Court decisions and binding U.S. Supreme Court precedent which required the ALJ to uphold the Arbitration Agreements.
4	11:46-48	The ALJ’s finding that the “situation in the instant matter” is the same as the situation which was before the Seventh Circuit in <i>Jacob Lewis</i> .
5	11:49-50	The ALJ’s finding that Respondent’s Arbitration Agreements require employees to forego any class, collective or consolidated actions.
6	11:50 12:1-2	The ALJ’s finding that employees were required to agree to the terms set forth in the Arbitration Agreements in order to become or remain employees of Respondent.
7	12:2	The ALJ’s finding that Respondent violated Section 8(a)(1) of the Act.

8	12, fn 2	The ALJ's rejection of Respondent's argument that the Arbitration Agreements are lawful based upon the Federal Arbitration Act.
9	12:4-37	The ALJ's finding that the Arbitration Agreements violate the Act as alleged in the Complaint because employees would reasonably believe that the Arbitration Agreement restricts them from access to the Board and/or filing charges with the Board (notwithstanding clear language to the contrary in paragraph 11 of the Arbitration Agreement).
10	12:22-27	The ALJ's finding that an employee would need specialized legal knowledge or the ability to apply legal analysis to understand that the Arbitration Agreements do not restrict employees from access to the Board and/or filing charges with the Board.
11	12:27-30	The ALJ's finding that paragraphs 1 and 2 of the Arbitration Agreements are unequivocal and state that any claim, controversy or dispute must be resolved by individual arbitration.
12	12:30-34	The ALJ's finding that it is fair to assume that with respect to applicants for employment at Respondent, if they did read the provisions of the Arbitration Agreement, they would not get as far as paragraph 11 and, if they did, it is likely that they would not understand that they could file charges with the Board, regardless of the provisions contained in paragraphs 1 and 2.
13	12:34-35	The ALJ's finding that even if the employee did get as far as paragraph 11, the following paragraph reinforces the restrictions contained in paragraphs 1 and 2.
14	12:35-37	The ALJ's finding that the Arbitration Agreements restrict employees from filing charges with the Board, in violation of Section 8(a)(1) of the Act.

15	12:47-48 13:1-2	The ALJ's conclusion that the Arbitration Agreements maintained by Respondent at its locations in the States of New York, New Jersey and Pennsylvania violate Section 8(a)(1) of the Act by requiring the employees to waive the right to maintain class or collective actions and restrict the employees from filing charges with the Board.
16	13:6-7	The ALJ's conclusion that Respondent violated the Act by maintaining the Arbitration Agreements as a condition of employment.
17	13:7-10	The ALJ's recommendation that Respondent be ordered to cease and desist from maintaining and enforcing this agreement, and that it be ordered to notify all employees, including those who signed the agreement, that it has been rescinded and they will not be required to sign it as a condition of employment.
18	13:10-13	The ALJ's recommendation that Respondent be ordered to notify any arbitral or judicial panel where it has attempted to enjoin, or otherwise, prohibit, employees from bringing or participating in class or collective actions, that it is withdrawing these objections and that it no longer objects to such employee actions.
19	13:20-26	The ALJ's recommended order that Respondent (and its officers, agents, successors and assigns) cease and desist from maintaining or enforcing its arbitration agreements in the States of New York, New Jersey and Pennsylvania.
20	13:28-30	The ALJ's recommended order that Respondent (and its officers, agents, successors and assigns) cease and desist from telling its employees that they must sign the Arbitration Agreement as a condition of obtaining or retaining employment with the Respondent in the States of New York, New Jersey or Pennsylvania.

21	13:32-33	The ALJ's recommended order that Respondent (and its officers, agents, successors and assigns) cease and desist from interfering with, restraining or coercing its employees in the exercise of their rights guaranteed them by Section 7 of the Act.
22	13:35-39	The ALJ's recommended order that Respondent (and its officers, agents, successors and assigns) rescind the Arbitration Agreements in the States of New York, New Jersey and Pennsylvania and notify all employees, and employee applicants, that it will no longer require employees in these states to sign this agreement as a condition of employment.
23	13:41-44	The ALJ's recommended order that Respondent (and its officers, agents, successors and assigns) notify arbitral or judicial panels, if any, where the Respondent has attempted to enjoin or otherwise prohibit employees in the States of New York, New Jersey or Pennsylvania from bringing or participating in class or collective actions, that it is withdrawing those objections and that it no longer objects to such employee actions.
24	14:1-12	The ALJ's recommended order that Respondent (and its officers, agents, successors and assigns) post at its facilities in the States of New York, New Jersey and Pennsylvania listed in the appendix attached to the Decision, copies of the notice marked "Appendix B" which was likewise attached to the Decision.
25	14:14-16	The ALJ's recommended order that Respondent (and its officers, agents, successors and assigns) be required to file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply with the ALJ's recommended order.

26	N/A	The ALJ's failure to find and conclude that the Arbitration Agreements are governed by the Federal Arbitration Act ("FAA") and not the NLRA or the Board's decisions in <i>D.R. Horton, Inc.</i> , <i>Murphy Oil USA, Inc.</i> or <i>Cellular Sales of Missouri, LLC</i> .
27	N/A	The ALJ's failure to find and conclude that the Board's decisions in <i>D.R. Horton, Inc.</i> , <i>Murphy Oil USA, Inc.</i> and <i>Cellular Sales of Missouri, LLC</i> . failed to defer to the FAA as that statute has been interpreted by the US Supreme Court and numerous appellate courts.
28	N/A	The ALJ's failure to find and conclude that the Arbitration Agreements do not require employees to forgo any substantive rights.

WHEREFORE, Respondent respectfully requests that the Board reject those portions of the ALJ's Decision excepted to, and conclude, in accordance with the stipulated record evidence and relevant decisional authority, that the unfair labor practice charges against Respondent be dismissed with prejudice.

Dated: New York, NY

August 3, 2016

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 3<sup>rd</sup> day of August, 2016, a true and correct copy of the forgoing was filed with the Board via the Board's electronic filing system, and served by electronic mail upon the following:

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August 3, 2016

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